



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-59/56833

PRELIMINARY RECITALS

Pursuant to a petition filed February 12, 2003, under Wis. Stat. §49.45(5) and Wis. Admin. Code §HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on May 29, 2003, by telephone.

The issue for determination is whether a greater portion of the petitioner's income should be "allocated" (disregarded) under spousal impoverishment provisions

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Represented by:

Atty. John Koenig
620 East Fond du Lac Street
PO Box 311
Ripon, WI 54971-0311

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Kathy McMullen, ES Supr.
Sheboygan County Dept. of Human Services
3620 Wilgus Ave.
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Sheboygan County. He is certified for MA as an institutionalized person.
2. The petitioner applied and was approved for Institutional MA in February, 2003. On February 10, 2003, the county agency issued written notice to the petitioner approving the application and

advising that the petitioner would have to contribute \$1,861.51 toward his nursing home care expense (the balance is paid for by MA). That notice also advised the petitioner that \$176.08 in the form of a Community Spouse Allocation would be subtracted from his income in this nursing home liability computation.

3. The petitioner's community spouse is employed. Her gross monthly income was calculated by the agency to be \$2,068.80. However, the average gross income from her two jobs totals \$2,130.84 monthly. See Exhibit 1.
4. The petitioner/institutionalized spouse has gross monthly income of \$2,082.59. After subtraction of a \$45 statutory personal allowance and the \$176.08 spousal allocation, the Department determined that the petitioner had \$1,861.51 available to contribute toward the cost of his nursing home care.
5. The community spouse has identified living expenses of \$2,940, which are payable monthly.
6. Of the monthly expenses referred to in Finding #5, \$2,740 are reasonable, basic and necessary living expenses.

DISCUSSION

Spousal impoverishment is an MA policy, created pursuant to the Medicare Catastrophic Coverage Act of 1988, that allows persons to retain assets and income that are above the regular MA financial limits. Spousal impoverishment policy applies only to institutionalized persons and their community spouses.

After an institutionalized person is found eligible, he may allocate some of his income to the community spouse if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation of \$2,266 [the 2/10/03 notice shows a maximum allocation amount of \$2,244; however, the *Handbook* shows the higher \$2,266 as of March 1, 2003]. See *MA Handbook*, Appendix 23.6.0 (3-1-03). In this case, the agency determined that the income of the community spouse was \$2068.80. The Department therefore allocated \$176.08 from (petitioner) net income to make up the "difference" between the Maximum Allocation and the community spouse's income.

(petitioner's spouse) argues that she cannot get by on the \$2,266 Maximum Allocation. The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed \$2,266. However, I have some limited discretion and have determined that (petitioner's spouse) income is short of what she needs to cover basic living expenses. The statute allows the allocation to be raised to avert financial duress, created by exceptional circumstances, for the community spouse. I conclude that his Maximum Allocation must be raised to **\$2,740** to avert financial duress. Several exceptional circumstances are present here: (1) the couple has a mortgage cost, and (2) (petitioner's spouse) is employed, thereby incurring income and other payroll taxes. See s.49.455(8)(c), Wis. Stats. The acceptable monthly expenses identified by (petitioner's spouse) are as follows:

Property tax and Mortgage	630.00
Homeowner's insurance	25.00
Telephone	110.00
Electricity/nat. gas/water	150.00
Home maintenance	50.00

Car repair/maintenance	85.00
Gas for car	85.00
Car insurance	50.00
Car savings	200.00
Food/supplies	350.00
Haircuts	35.00
Clothing	50.00
Wife's life insurance	20.00
(petitioner) clothing	30.00
Mrs. K dental care	20.00
Mrs. K eye care	10.00
Income taxes	500.00
Mandatory union dues	50.00
Mrs. K health insurance	150.00
Life Insurance-payroll deduction	40.00
Deferred Compensation	<u>100.00</u>
 TOTAL	 2740.00

See Exhibit 7A.

In setting the Maximum Allocation at \$2,740, I accepted as accurate all of the budget numbers provided by the community spouse in Exhibit 7A. The petitioner's gas cost is slightly higher than normal because she drives to work and to her husband's nursing home for daily visits. The spouse also pays income taxes because she is employed. Further, unlike the typical, elderly community spouse, she is still making mortgage payments. Her telephone bill is higher than normal because all of her children live out of town. These factors cause her to need more than the typical \$2,266 maximum to survive on.

The community spouse requested a Maximum Allocation of \$2,940. Two of the expenses listed by the petitioner on Exhibit 7A cannot be treated as a basic living expense, and therefore were not included in the list of allowable expenses above. The petitioner listed \$150 monthly for entertainment/dining out, and \$50 for family special events. These are not the kind of essential expenses envisioned by the statute; i.e., she will not suffer "financial duress" if these expenses are not allowed.

CONCLUSIONS OF LAW

1. Due to exceptional circumstances, the petitioner's wife requires a \$2,740 Maximum Community Spouse Income Allocation for as long as she continues to incur the expenses identified above.

NOW, THEREFORE, it is

ORDERED

That the petition herein be remanded to the county agency with instructions to increase (petitioner's spouse) Maximum Community Spouse Income Allocation to \$2,740 effective with the February, 2003, cost of care determination. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition herein is dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 12th day of
June, 2003

/sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals
86/NJG MRAinc

